IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 1057 of 1991

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHARDABEN PRAHLADBHAI PATEL - Applicant(s)

Versus

MANUBHAI B CHUDASAMA & 1 - Opponent(s)

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Appearance :

(MR AG URAIZEE) for Petitioner No(s).: 1.

UNSERVED-EXPIRED (N) for Petitioner No(s).: 1.

NOTICE UNSERVED for Petitioner No(s).: 1.

MR KV SHELAT for Respondent No(s).: 1,2.

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CORAM :HON'BLE MISS JUSTICE R.M.DOSHIT

Date : 15/07/2005

ORAL JUDGMENT

The intimation of appointment of the learned advocate appearing for the petitioners as a Judge has returned unserved upon the petitioner no. 1 as she is reported to have died; and upon the petitioner no. 2 as she has not

been residing at the given address. The report of the bailiff states that the house in question is closed.

In HRP Suit No. 2095 of 1981, instituted in the Court of Small Causes, Ahmedabad, the respondents-landlords sought recovery of possession of the suit house on the ground that the defendant-tenant was not residing in the suit house and the suit house was not used for six months and more preceding the date of the suit. The learned trial Judge, by judgment and order dated 23rd March, 1984 dismissed the suit. Though it was held that the suit house was not being used by the tenant for his residence, the learned trial Judge was of the opinion that the defendant-tenant was residing in the Old Peoples' Home {Vruddh Ashram} as he was too old to live alone and there was no body to look after him, but he did occasionally visit the suit house. The tenant, therefore, cannot be said to have not used the suit house for his residence as envisaged by Section 13 (1)(k) of the Rent Act. *Alternatively*, it was held that even if the suit house were not used, it could not be said to be without reasonable cause. Therefore also, the plaintiff was not entitled to decree for eviction. Feeling aggrieved, the plaintiffs preferred Civil Appeal No. 152 of 1984 before the appellate bench, Small Causes Court, Ahmedabad. Pending the said Appeal, the defendant-tenant died. His heirs and legal

representatives, the present petitioners were substituted. The lower appellate Court, by judgment and order dated 3rd September, 1991 allowed the Appeal and passed decree for possession in favour of the plaintiffs. The lower appellate Court was of the opinion that the occasional visits did not amount to continuous residence. It was, therefore, held that the defendant-tenant was not using the suit house for a continuous period of six months for the purpose for which it was let to him. The defendant had failed to prove the reasonable cause for not residing in the suit house. Feeling aggrieved, the respondents preferred present Revision Application.

In view of the above facts, I am of the opinion that the lower appellate Court had rightly passed decree for possession in favour of the plaintiffs. Besides, as stated hereinabove, the petitioners have not prosecuted this Revision Application. The Revision Application is accordingly dismissed. Rule is discharged. *Interim* relief stands vacated. There shall be no order as to cost.

{Miss R.M Doshit, J.}

Prakash*